

VIRGINIA EMPLOYMENT COMMISSION (VEC) EMPLOYER HANDBOOK



July 2005

INTRODUCTION

The Virginia Unemployment Compensation Act (Title 60.2 of the Code of Virginia) contains the provisions under which Virginia's Unemployment Insurance Program is administered. Stemming from this Act is the Regulations and General Rules Affecting Unemployment Compensation, sections of which are cited in this handbook (Regulation 16 VAC). The Unemployment Compensation Act is available online at:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC6002000>

This handbook is an attempt to explain the various statutory and procedural aspects of the program in non-technical terms. It *does not* have the effect of law and should not be so construed. Each passage of the handbook references the appropriate section of the Code or applicable regulation. Questions related to the program can be addressed to staff at any of the VEC Field Offices or to the appropriate section of our Richmond administrative office. Additional employer, labor market, job seeker and claimant information is available on the VEC web site at: <http://www.vec.virginia.gov>

GLOSSARY OF TERMS

Acquisition - The transaction by which an individual or organization obtains the organization, trade, business, or assets of another individual or organization and, thereby, becomes subject to the Virginia Unemployment Compensation Act. 60.2-210

Agricultural Labor - Any services performed on a farm or in farm-related work in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market of any agricultural or horticultural commodity. 60.2-201

Audit - A formal or official examination and verification of an employer's records.

Base Period - The first four of the last five completed calendar quarters preceding the week in which the claim is filed. If the claimant has earned insufficient wages in the first 4 of the last 5 completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the 4 most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year. 60.2-204

Benefit Ratio - The percentage equal to the sum of the benefit charges for the four-year period ending on June 30 preceding the year for which the tax rate is being computed divided by the total of the paid taxable payrolls for the same period. 60.2-530

Benefit Year - The fifty-two-week period beginning with the first day of the week in which an individual files a new claim. 60.2-206

Calendar Quarter - The period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

Claimant - An unemployed individual who files a claim for unemployment compensation.

Corporation - An entity formed and authorized by law to operate and conduct business in the same manner as an individual.

Delinquent Employer - An employer who has failed to submit required quarterly tax reports, payments, interest, and/or penalties by the due dates. 60.2-513, 60.2-538

Duration of Benefits - The number of total weeks of benefits a claimant may potentially draw during a benefit year. 60.2-602, 60.2-607

Employer - An employing unit that meets the liability requirements under the law and is required to pay unemployment insurance taxes. 60.2-210

Employing Unit - Any individual, organization, or governmental entity that has one or more individuals performing services for it within the state. 60.2-211

Employment - Any service performed by an individual for remuneration under any written or oral contract of hire with an employing unit. 60.2-212 (For references on exemptions to "employment," see Section 60.2-219.)

Experience Rating - A system used to establish employer tax rates based on past employment and unemployment experience. 60.2-530, 60.2-531

Extended Benefits - Unemployment benefits paid to a claimant after regular benefits have been exhausted, during periods of prescribed high national or state unemployment levels. 60.2-610, 60.2-611

Federal Employer Identification Number (FEIN) - The registration number assigned by the Internal Revenue Service to an employer.

FUTA - Federal Unemployment Tax Act - The tax imposed by the federal government on employers with respect to having individuals in their employ. 60.2-218

Inactive Account - Status assigned to an employer's account when it has been found that the employer no longer has employees and, therefore, no payroll report or taxes to submit.

Insolvent - The condition of a legal entity that is unable to pay its debts.

Insured Employment - Term used to describe employment covered by the Unemployment Compensation Act of Virginia or any other state.

Interest - Monetary charge, which is computed and added to the amount of taxes, owed and remaining unpaid after the date such taxes were due. 60.2-519

Last Thirty-Day Employer - The most recent employer for whom a claimant performed services for any part of a day for thirty days, whether or not such days were consecutive, or a total of 240 hours.

Liability Date - The date that an employer meets the statutory criteria for liability coverage with the Virginia Employment Commission.

Maximum Benefit Amount - The total amount of benefits that an individual may receive during his benefit year. (This amount is determined by multiplying his weekly benefit amount and the number of weeks of benefits for which he may qualify.) 60.2-607

Tax Report - The portion of the Employer's Quarterly Report (Forms VEC FC-20/21) that states the total wages paid, the amount of taxable wages, and taxes due by the employer for the quarter covered by this report. 60.2-512

Unemployment - An individual is totally "unemployed" during any week in which he performs no services and with respect to which *no* wages are payable to him; he is partially "unemployed" if he works less than his full-time hours and receives less wages than his weekly benefit amount. 60.2-226

Waiting Week - The first week of eligibility in a claim year is a waiting week and is not paid. Only one waiting period week is served in a benefit claim year. 60.2-612.9

Week - Seven consecutive days beginning on Sunday and ending the following Saturday at midnight. 60.2-230

Weekly Benefit Amount (WBA) - The weekly benefits payable to a totally unemployed individual. The amount is based on prior earnings. 60.2-602

TAX INFORMATION

DISPLAY OF POSTERS - Employers shall post and maintain in a place readily accessible to employees any poster furnished by the Virginia Employment Commission relating to unemployment insurance. Also, if an employer is later determined not liable, the poster must be removed. 60.2-106. A list of required posters (both Virginia and Federal) is available at: http://www.vec.virginia.gov/vecportal/employer/employer_services.cfm

WHO IS LIABLE - Not all employing units in Virginia are subject to the taxing provisions of the unemployment compensation law. Coverage (tax liability) is determined by the number of workers employed, the duration and nature of services performed, and the amount of wages paid for services in employment. Once the liability conditions are met for your type of employment, you are required to report the total payroll for the entire year, by quarter, and pay the appropriate amount of taxes. Regulation 16 VAC 5-20-10

You are automatically liable for coverage if you:

- acquire a business, which is liable under the law; (You also may be responsible for any sum owed by the seller.)
- are liable to the federal government for Federal Unemployment Tax (FUTA); are a state, local government, or political subdivision. 60.2-210

If you are other than an agricultural, domestic, or nonprofit employing unit, you are liable if you have one or more employees who work for any portion of a day in twenty different weeks in a calendar year **or** if your total gross payroll for any calendar quarter is \$1,500 or more. 60.2-210

If you are an agricultural employing unit, you are liable if you employ ten or more workers for some portion of a day in twenty different weeks during a calendar year or if you have a payroll of \$20,000 or more in a quarter. Either the farm operator or the crew leader can be the employer.

A farm operator is the employing unit if:

- the individual is an employee of the farm operator **or**
- the worker is furnished by the crew leader but is not treated as an employee of the crew leader, that is, the crew leader is acting on behalf of the farm operator rather than as an employer **or**
- the crew leader has entered into a written agreement with the farm operator under which the crew leader is designated as an employee of the farm operator.

A crew leader is the employing unit if:

- the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Workers Protection Act of 1983 **or**
- substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment or any other mechanized equipment provided by the crew leader, **and**
- the individual is not an employee of any other person. 60.2-214

The services of aliens are counted in determining your liability and the alien wages must also be reported. The Migrant and Seasonal Agricultural Act is available online at:
<http://www.dol.gov/dol/compliance/comp-msawpa.htm>

If you are a domestic service employing unit, you are liable if you paid wages of \$1,000 or more in a quarter. The following occupations are usually considered as domestic service in private households. Inside Workers: cooks, laundresses, maids, sitters, butlers, personal secretaries, managers of personal affairs, companions, porters, and nurses. Outside Workers: gardeners, caretakers, chauffeurs, and other maintenance workers. Registered Nurses (RN) and Licensed Practical Nurses (LPN) are generally exempted from coverage. 60.2-215

In order to qualify as a nonprofit organization for unemployment insurance purposes, you must have been granted a 501 (c) (3) exemption by the Internal Revenue Service.

You are liable for unemployment insurance tax, however, if you employ four or more workers in any portion of twenty different weeks in a calendar year. Non-profit organizations that are liable have the option to be tax paying or reimbursable. 60.2-213 A, 60.2-501

WHO IS AN EMPLOYEE OR INDEPENDENT CONTRACTOR ? - Some employers consider certain individuals who perform work for them as independent contractors, and not as employees. Under the Act, however, this may not be the case. Employment generally means any service performed for remuneration or under any contract for hire - written, oral, expressed, or implied unless: (a) the individual has been and will continue to be free from control or direction over the performance of service under his/her contract, *and* (b) the service is either outside the usual course of the business; or the service is performed outside of all the places of business of the enterprise; or the individual, in the performance of such service, is engaged in an independently established trade, occupation, profession, or business. 60.2-212

Thus, the services individuals perform for remuneration under a contract for hire are deemed to be "employment" unless they are exempt under both (a) and (b) above. The burden is on the employer to establish, by a preponderance of the evidence, that service performed is within the statutory exemptions.

The right of control includes not only the power to specify the result to be accomplished, but must include the power over the performance of such services. If the party for whom the work is to be done has and/or uses the power to direct the means and methods by which the other does the work, an employer-employee relationship exists. Among the tests used to help determine if the right to control exists are: whether instructions or rules/guidelines have to be obeyed; whether either of the parties possesses the right to terminate services at will without incurring liability to the other; who determines hours/days of work; and who determines how the work will be done.

Effective July 1, 2005, the Code of Virginia changed - § 60.2-212 of the Code of Virginia is amended and reenacted as follows:

A. "Employment" means:

1. Any service including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied; and

2. Any service, of whatever nature, performed by an individual for any employing unit, for remuneration or under any contract of hire, written or oral, and irrespective of citizenship or residence of either,

a. Within the United States, or

b. On or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the individual is employed on the vessel or aircraft it touches at a port in the United States, if such individual performs such services on or in connection with such vessel or aircraft when outside the United States, provided that the operating office, from which the operations of the vessel or aircraft are ordinarily and regularly supervised, managed, directed or controlled, is within the Commonwealth.

B. Notwithstanding subdivision 2 b of subsection A of this section, "employment" means all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this *the* Commonwealth.

C. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless the Commission determines that such individual is not an employee for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, based upon an application of the 20 factors set forth in Internal Revenue Service Revenue Ruling [87-41](#), issued pursuant to 26 C.F.R. 31.3306(i)-1 and 26 C.F.R. 31.3121(d)-1.

D. Notwithstanding the provisions of subsection C, an individual who performs services as a real estate salesperson, under direction of a real estate broker under Chapter 21 (§ [54.1-2100](#) et seq.) of Title 54.1, or as a real estate appraiser under Chapter 20.1 (§ [54.1-2009](#) et seq.) of Title 54.1 pursuant to an executed independent contractor agreement and for remuneration solely by way of commission or fee, shall not be an employee for purposes of this chapter.

Those services that are not part of the regular operation of the business are generally considered outside the usual course of the business. For example, a doctor has someone paint his office.

An established business within the meaning of the Code is one that is permanent, fixed, stable, or lasting. There are some things that you can do which may help you in determining if a person is a bona fide independent contractor.

First:

- Ask for his federal and state identification numbers;
- Look at his business license;
- Ask for his business calling card;
- Determine if he is listed in the business section of the local telephone directory;

Then:

- Call your nearest VEC Field Office and ask the Tax Representative to review your operations and render a determination.

LOCALIZED & NON-LOCALIZED EMPLOYMENT - Sometimes employees work in more than one state. As a result, some confusion may occur as to where to report their wages. The following is a general guide to determine where to report wages. Once a condition is met as outlined below, wages are reported to that state and you need not go further to determine the liable state.

- If all work was performed in Virginia, then wages are reported to Virginia.
- If the work was performed in Virginia as well as in another state, the employee's base of operations (home office or branch office) plays a factor on where his wages are reported. In most instances, the state in which the employee's home office or branch office is located is where the wages are reported. The exception here, however, is where the work performed in the home office or branch office is incidental or transitory in nature (for example, attendance at occasional meetings). In determining incidental or transitory service, the intent of the work must be reviewed. If the transaction was part of the employee's normal work, then it would not be incidental. Also, the length of service with the employer within Virginia as compared to the length of service outside the state is considered. Because variations occur, no fixed length of time can be used to determine incidental or transitory service.
- In the instance where no work is performed in the home office or branch office state, then residence becomes the determining factor on where to report the wages. An example would be an employee who lives in Virginia, whose territory covers more than one state, and who performs no work in the home office or branch office state other than incidental. In this instance, wages are reported to Virginia, the place of residence. 60.2-217

NON-COVERED EMPLOYMENT - The following types of employment are not subject to unemployment tax: 60.2-212, 60.2-212.1, 60.2-213, 60.2-219

1. Self-employed individuals and partners of a partnership; however, officers of a corporation usually are in covered employment unless they prove that they did not perform services or receive pay.
2. Parent, spouse, or children under the age of 21 of the individual for whom they are performing services.
3. Governmental workers who are elected officials or officials in non-tenured major policy-making or advisory positions; officials in policy-making and advisory positions which require less than eight hours of work a week; members of a legislative body or the judiciary; members of the State National Guard or Air National Guard; governmental employees serving on a temporary basis in case of natural disaster.
4. Patients performing services for a hospital.
5. Student nurses and graduate interns in the employ of a hospital.
6. Students performing services for the school, college, or university in which they are enrolled and regularly attending classes.
7. Students, if the employment is a recognized part of a program that combines academic instruction with work experience.
8. Rehabilitation program enrollees who are provided remunerative work in order to increase their earning capacity or labor market skills. The program must be provided by an organization that is described under section 501 (c)(3) of the Internal Revenue Code or is a governmental entity.
9. Work-relief or work-training participants who take part in a program provided by an organization that is described under section 501 (c)(3) of the Internal Revenue Code or is a governmental entity.
10. Inmates of a custodial or penal institution.
11. Employees of a church, religious order, or religious organization.

12. Newspaper carriers under 18 years old.
13. Insurance agents, real estate agents, or agents involved in the wholesale distribution of petroleum products if their total wages are based solely on commission.
14. Service performed in connection with a vessel or aircraft that is not American.
15. Service performed in connection with a vessel engaged in catching or cultivating any form of aquatic animal or vegetable life except salmon or halibut. If the vessel is more than ten net tons, the employment is covered under the law.
16. Individuals whose wages in any quarter are less than \$50 provided the organization is tax-exempt under 501 (a) of the Internal Revenue Code.
17. Employment subject to the Federal Railroad Unemployment Insurance Act.
18. Aliens employed in agricultural labor. For employment occurring through 1994, you must count their wages in determining liability. If liable, you do not report their wages. Beginning in 1995, their wages are counted in determining liability and their wages must be reported if liability is established.
19. Medical services provided in a private residence or medical institution where the individual receiving the services is the employer. If the IRS rules that you are subject to the Federal Unemployment Tax Act (FUTA), then you are automatically liable for state unemployment tax.
20. Individuals providing services in their homes through agreement with a public human service agency for eligible recipients.
21. Under certain conditions, services performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat.
22. Full-time students in the employ of an organized camp.
23. An owner-operator or lessee of a vehicle which is licensed and registered as a truck, tractor, or truck-tractor is an independent contractor, not an employee; while performing services in the operation of his truck when certain factors are substantially present.
24. Services performed by an individual as a "direct seller" engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations for resale by the buyer or to a consumer in the home or otherwise than in a permanent retail establishment.
25. Services performed as a taxicab driver, or after 7/1/92 as a driver of an "executive sedan" as defined by Section 46.2-2500 of the Code, provided evidence is furnished that such individual is excluded from FUTA.
26. Services performed as a "contract carrier courier driver" provided evidence is shown that such individual is excluded from taxation by FUTA.
27. Services performed by a court reporter for an employer if wages are paid solely by way of commission.
28. Services performed as a cosmetologist or barber provided evidence is shown that such individual is excluded from taxation by FUTA.
29. Effective July 1, 2004, services performed by an inmate for a penal or custodial institution or while participating in the Diversion Center Incarceration Program.

VOLUNTARY ELECTION OF COVERAGE - Employing units that are not subject to the taxing provisions of the law may submit an application for voluntary election of coverage to the Virginia Employment Commission. If the Commission approves the application, the employing unit becomes liable for at least two full calendar years and is bound by the laws and regulations in the same manner as other covered employers. The election will be approved beginning with the current year. 60.2-510

SUCCESSORS - An individual or employing unit is termed a successor upon acquiring the organization, trade, or business of another (the predecessor). If the law covered the predecessor, the successor is automatically covered regardless of the number of workers in its employ. The successor may be held responsible for sums owed by the predecessor. The amount will not exceed the value of the acquired assets. 60.2-210, 60.2-523

TERMINATION - An employing unit remains liable from year to year until officially released by the Commission. An employer may request in writing that its account be terminated provided its account reflects that the preceding year's employment experience warrants termination. 60.2-509

UNEMPLOYMENT TAXABLE WAGE BASE - You pay state unemployment tax only on the first \$8,000 of wages earned for each employee during a calendar year.

WAGES - The term "wages" for the purpose of unemployment insurance means:

- all sums payable, including wages, salary, commissions, and tips;
- cash value of all other forms of remuneration, such as board and lodging; (The value of meals and lodging furnished should not be included if furnished at the employer's premises for the convenience of the employer.) 60.2-229, Regulation 16 VAC 5-10-10
- special payments such as annual bonuses, severance pay, and back pay. 60.2-229(A)

Sick Pay - Under a Plan - Payments by an employer to a worker for sickness or accident disability that are paid under a plan shall be included as wages, with the exception of such payments made under the provisions of a workers' compensation law. 60.2-229(B)(2)

Sick Pay - No Plan - Any amount paid by an employer because of sickness, or accident disability, or medical or hospitalization expenses where no formal plan exists will constitute taxable wages for six calendar months, with the exception of payments under a workers' compensation law. After the expiration of six calendar months, such sick pay does not constitute wages. 60.2-229(B)

REIMBURSABLE EMPLOYERS - Governmental and nonprofit organizations described in Section 501 (c)(3) of the Internal Revenue Code may choose either to pay taxes quarterly or to reimburse the Commission dollar-for-dollar for their proportionate share of benefits paid. All state agencies are reimbursable by order of the Governor. Liability is based on the reimbursable employer's share of wages used to compute the claim. The drawback to the reimbursable method is that the reimbursable employer may not be the separating employer, yet can be held responsible for benefits paid. If it is not the separating employer, only the computation of the bill can be appealed and not the reasons for the claimant's separation from his employment.

If the reimbursable method is chosen, it remains in effect for a minimum of one calendar year. The method can be changed by writing a letter, which must be received no later than December 1, to:

Virginia Employment Commission,
Employer Accounts Unit, Room 108,
Post Office Box 1358,
Richmond, VA 23218-1358.

A reimbursable employer is notified by the form "Notice of Benefit Liability," VEC-B-30R, of potential liability when a claimant files a claim using wages earned in reimbursable

employment. A "Quarterly Reimbursable Billing," VEC-B-47, is sent informing the employer of the amount due as a result of benefits paid. Appeals must be filed within thirty days from the date of billing. **Reimbursable employers must submit a quarterly payroll even though no tax is due.** Regulation 16 VAC 5-32-20

EXPERIENCE RATING - Experience rating is a system used to establish employer tax rates based on past employment and unemployment experience. 60.2-530, 60.2-531

NEW EMPLOYERS - The new employer tax rate will be 2.5% until that employer becomes eligible for a computed rate. Eligibility for a computed rate occurs when an employer has a taxable payroll for at least a 12-month period ending June 30. Rates are then computed to be effective on the upcoming January 1. Foreign (out-of-state) contractors must pay the maximum tax rate for three years; their accounts are then eligible for computation. 60.2-526 (B), 60.2-527

HOW YOUR TAX RATE IS COMPUTED - Employers determined eligible for computation are assigned a computed tax rate ranging from 0% to 6.2% and are notified by the "Tax Rate Notice," VEC-FC-29. Tax rates are computed, effective January 1 of each year, using the sum of the paid taxable payroll and benefit charges for the four-year period ending on the preceding June 30. The benefit ratio is obtained by dividing the total amount of benefits charged against the account by the total of the paid taxable payrolls. To obtain a percentage, multiply the resulting figure by 100. Payrolls used for this calculation are those for which taxes were paid by September 30 prior to the year for which the rate is being computed.

The computed tax rate is determined by applying the resulting percentage and the trust fund balance factor to the rate tables provided by the law. In addition to the computed tax rate, employers may be assessed additional amounts for pool costs and fund building. These are explained below. 60.2-530, 60.2-531

BENEFIT CHARGES - When a claim for unemployment benefits is filed, the employer for whom the individual last worked for thirty days (or 240 hours), whether or not such days are consecutive, is the liable employer for the claim. As a result, that employer is charged for any benefit payments made to the individual.

If the following conditions exist, however, no benefit charges are assigned to the last thirty-day employer:

- if the individual's separation arose as a result of an unlawful act which led to confinement in jail or prison.
- if an individual left work to accept other work believing the new work to be permanent.
- if an offer of rehire was declined because the individual was in training approved by the Commission, or if an individual left work voluntarily to enter approved training under Section 236 of the Trade Act of 1974, as amended.
- if an individual left work voluntarily with good cause due to a personal bona fide medical reason caused by a non-job related injury or medical condition.

"Quarterly Charge Statements"(VEC-B-46) are mailed four times a year to advise employers of the individuals and the amount of benefits charged against their accounts. 60.2-528

POOL COST CHARGE - The pool cost charge is added to all employers' tax rates to compensate for charges that cannot be assigned to any specific Virginia employer. This rate is computed every year based on these costs and other factors. 60.2-532

FUND BUILDING CHARGE - When the trust fund balance does not exceed 50% of solvency, an additional charge must be placed on all employers. This charge is added to all existing rates in order to keep the trust fund solvent. 60.2-533.

TOTAL TAX RATE - Total tax rate is computed by adding the (1) computed tax rate, (2) pool cost charge, and (3) fund building charge. Pool cost and fund building charges are computed each year and are reflected on your annual tax rate notice. Tax rate notices for the upcoming year are mailed in December of each year.

ACQUISITIONS

Total Acquisitions - Employers acquiring a business have the option of receiving the experience rate of the predecessor's account, or receiving the new employer rate. Such notification to the Commission must be made within 60 days of such acquisition to receive the "new employer" rate. A previously liable successor retains its rate for the year of acquisition based on its own experience. A newly liable successor receives a rate for the year of acquisition based on the option chosen. 60.2-535.

Partial Acquisitions - An employer acquiring a portion of a business must have an authorized officer of the predecessor complete and sign the "Division of Taxable Payroll for Partial Acquisitions," VEC-FC-45, within thirty days of notification by the Commission that the form is required. The predecessor must furnish the Commission with the division of the payrolls and benefit charges on that portion of the business transferred for the forty-eight-month period immediately preceding the date of acquisition.

If the predecessor does not provide this information within the thirty-day period, the newly liable successor is assigned the rate of the predecessor for the year of acquisition and the maximum rate for subsequent years until his own experience is adequate for a reduced rate. The previously liable successor would continue with its own experience record if the completed form is not furnished. 60.2-515, 60.2-535

SUTA Dumping – effective March 20, 2005 - Transfers for the purpose of obtaining a lower unemployment compensation tax rate; assignment of rates.

A. If an employer shall transfer any trade or business to another employer where, at the time of transfer, there is substantially common ownership, management, or control of the trade or business, then the unemployment experience attributable to the transferred business shall also be transferred to, and combined with the unemployment experience attributable to, the employer to whom such business is transferred. If the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, that employer shall be subject to the penalties established by § [60.2-536.3](#).

B. If an employer shall transfer any trade or business to a person who is not otherwise an employer at the time of such transfer, and the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate:

1. The unemployment experience of the acquired business shall not be transferred to such person; instead, such person shall be assigned the higher of the transferred business' calculated rate or the new employer rate under § [60.2-526](#); and
2. Such person shall be subject to the penalties established by § [60.2-536.3](#).

C. Any person who shall knowingly advise another person to engage in a transfer of any trade or business, where the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, shall be subject to the penalties established by § [60.2-536.3](#).

D. The Commission shall establish methods to identify and investigate the transfer or acquisition of a business for purposes of this section.

1. For the purposes of determining whether there is "substantially common ownership, management, or control of two or more employers," the Commission shall consider all relevant facts and circumstances, including the extent of commonality or similarity of: (i) ownership, (ii) any familial relationships, (iii) principals or corporate officers, (iv) organizational structure, (v) day-to-day

operations, (vi) assets and liabilities, and (vii) stated business purpose.

2. For the purposes of determining whether a business was transferred solely or primarily to obtain a lower unemployment tax rate, the Commission shall consider the facts and circumstances of the transfer, including: (i) the cost of acquiring the business, (ii) how long such business was continued, and (iii) whether a substantial number of new employees was hired to perform duties unrelated to the business activity conducted prior to the transfer. § [60.2-536.2](#).

Advisory opinion by the Commission - Upon application by an employer who is a party to a transfer or potential transfer of any trade or business, the Commission shall issue an advisory opinion as to whether such transfer constitutes a transfer pursuant to § [60.2-536.1](#), or is solely or primarily for the purpose of obtaining a lower unemployment tax rate. The application shall be under oath or affirmation, in a form prescribed by the Commission, and shall fully set forth all relevant facts regarding the proposed transfer. The Commission may require such additional information and documentary evidence as deemed necessary for a fair and informed opinion. Such opinion shall be issued within 60 days after the Commission has received all of the information and evidence requested.

An employer who proceeds with the transfer of a trade or business in reliance upon a favorable advisory opinion issued under this section shall not subsequently be found to have violated the provisions of § [18.2-204.3](#), and shall not be subject to the penalties of § [60.2-536.3](#), provided such employer has made full disclosure of all relevant facts to the Commission. If an employer disagrees with the Commission's advisory opinion, it shall have the right to a hearing and decision pursuant to § [60.2-500](#), provided that an application for a hearing is filed with the Commission within 30 days from the date the advisory opinion was mailed. § [60.2-536.3](#).

Violations; penalties –

A. If a person knowingly transfers, or attempts to transfer, any trade or business where the sole or primary purpose is to obtain a lower unemployment tax rate, or if a person knowingly advises another person to engage, or attempt to engage, in such transfer, such person shall be subject, in addition to the criminal penalties set forth in § [18.2-204.3](#), to the following additional rate of contributions and civil penalty:

1. If the person is an employer, he shall be assigned the highest rate assignable under this chapter for the calendar year during which such violation or attempted violation occurred, and for the next calendar year immediately following such year. However, if the employer is already at such highest rate for that year, or if the amount of increase in the employer's rate would be less than two percent for any such year, then an additional rate of contributions of two percent of taxable wages shall be imposed for such year, which shall be paid into the benefit account of the Unemployment Compensation Fund pursuant to § [60.2-301](#).
2. If the person is not an employer, he shall be subject to a civil penalty of \$5,000, which shall be paid into the Special Unemployment Compensation Administration Fund pursuant to § [60.2-314](#).

B. Final orders of the Commission with respect to the provisions of § [60.2-536.1](#) may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Clerk of the Commission. Such orders may be appealed pursuant to § [60.2-500](#). § [60.2-536.4](#). Interpretation.

The provisions of §§ [60.2-536.1](#) through [60.2-536.3](#) shall be interpreted and applied in such a manner as to meet the requirements contained in Public Law [108-295](#).

EMPLOYMENT RECORDS - All employing units are required by law to maintain complete payroll records on all employees. These records **must** include:

- the employee's name and social security number,

- date hired, rehired, or returned to work,
 - date and reason for separation from employment,
 - the state in which services were performed,
 - schedule of work hours per day,
 - time lost when worker was unable to perform his usual duties, and
 - wages payable and dates covered for each pay period, as well as total wages paid for each quarter including:
 - a) tips,
 - b) cash value of other forms of remuneration,
 - c) special payments such as annual bonuses, gifts, prizes, severance pay, and,
 - d) payments of advancement or reimbursement for business expenses.
- Regulation 16 VAC 5-32-10.A

The law requires that employers make their records available during reasonable hours to authorized representatives of the Virginia Employment Commission. 60.2-114. Employer payroll records must be maintained for auditing purposes for a period of four years from the date wages were paid or payable. Regulation 16 VAC 5-32-10.B

REPORTING REQUIREMENTS

Liability Determination Report - All employing units are required to file a "Report to Determine Liability for State Unemployment Tax," Form VEC-FC-27" including those acquiring a business, regardless of the type or duration of employment involved. This form is provided to the employer along with an instruction sheet for completing the form and gives the agency the information necessary to determine liability. Employers are notified of the results of the determination. Any employing unit disagreeing with the agency's determination may request a hearing before the Commission. The Commission's decision may be appealed to the Circuit Court of the City of Richmond. This form should be submitted at any time when liability is questionable. 60.2-500, Regulation 16 VAC 5-32. The VEC FC-27 form is available online at: http://www.vec.virginia.gov/vecportal/employer/employer_services.cfm

Employer's Quarterly Payroll and Tax Report - Liable employers are required to file an "Employer's Quarterly Report," (VEC-FC-20 and VEC-FC-21) each quarter. These forms are used to report wage, tax, and employment information. They are due at the end of the month following the end of a calendar quarter. 60.2-512 Regulation 16 VAC 5-32.

The VEC FC-20, 21 (and instructions) are available on the Employer Services page at: www.vec.virginia.gov. **Employers who report 250 or more employees in any calendar quarter must** file quarterly payroll reports on magnetic media using a format prescribed by the Commission. For detailed information please write to:

Virginia Employment Commission
Tax and Wage Information Processing Unit - Room 123
P.O. Box 1358
Richmond, VA 23218-1358.

Every employer in active status is mailed a form pre-printed with the employer's name, address, account number, and the rate at which taxes are to be computed. If you do not receive these forms, you should request that a set be mailed to you by calling your local unemployment tax representative.

Failure to receive Forms VEC-FC-20 and VEC-FC-21 does not relieve you of the responsibility for filing the reports.
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Employers are required to list the name, social security number, and total wages paid to each covered employee during the calendar quarter on the "Employer's Quarterly Report," VEC-FC-20 and VEC-FC-21. Include all wages paid both in cash and in any remuneration other than cash. All severance pay shall be reported as wages on Quarterly Reports. Extreme care should be taken to ensure that the information provided is correct as it is used in processing claims for unemployment benefits. 60.2-512, 60.2-229, Regulation 16 VAC 5-32-10.A. Quarterly wage reports by magnetic media are acceptable and encouraged. The following format is accepted:

- Magnetic reporting in the format prescribed by The Social Security Administration publication Magnetic Media Report and Electronic Filing (MMREF). Additional information is available on The Social Security Administration web page at <http://www.ssa.gov/employer/erii2b.htm>. Data may be submitted on:

3½ inch diskette,
CD Rom, or
3490 Data Cartridge

For additional information contact the Tax and Wage Information Processing Unit at the address shown above, by phone at 804-786-4207, or log on to the VEC web site for technical specifications. The taxable wage base in Virginia is \$8,000. Unemployment insurance tax must be paid on the amount of annual wages paid to an individual in any calendar year up to the taxable wage base. 60.2-229(B). Employers who discontinue or sell their business should notify the Commission within thirty days. Reports and taxes are due on the usual due dates. Regulation 16 VAC 5-32-20.D.

CORRECTIONS & ADJUSTMENTS - If you find that a previously filed quarterly report was incorrect, you must notify the Commission in writing and furnish the correct information. In the case of an underpayment, remittance should be made as soon as possible since interest begins accumulating after the due date. Do *not* use the "Employer's Quarterly Report," VEC-FC-20 and VEC-FC-21, for making adjustments. If you are not able to pay the tax due, the payroll *and* tax report must still be submitted so that these wages may be entered in our database for claims purposes. If you question your liability for benefit charges, the reports and the remittance should be submitted until the discrepancy is resolved.

PENALTIES & INTEREST - A penalty of \$75 per report is charged for late tax and/or payroll reports effective with the due date of the third quarter 2004 report. Newly covered employers must file all quarterly tax reports by the due date of the quarter in which an employer account number is assigned to avoid the penalty on each report. A penalty of \$25 is charged for each dishonored check. Interest is charged at the rate of 1.5% per month until payment is received. Any part of a month will be considered as a full month for the purpose of computing interest. 60.2-513, 60.2-519

INJUNCTIONS - In extreme cases where the agency cannot secure compliance, it may petition the courts to issue an injunction prohibiting the employer from doing business until the employer has complied with the law. 60.2-522

AUDITS OF EMPLOYER RECORDS - In order to ensure compliance with taxing provisions of the state law, audits are conducted on employer records periodically. An audit may reveal an underpayment or overpayment of taxes by an employer. The tax representative will assist in making the proper adjustments to the account. 60.2-114

All VEC tax representatives carry official identifying documents issued by the agency. Do not hesitate to ask for proper identification.

BENEFITS INFORMATION

FILING A CLAIM - When an individual files a claim for benefits, his eligibility is determined by three factors:

1. monetary eligibility,
2. reason for separation, and
3. weekly eligibility.

MONETARY DETERMINATION - To establish a claim, an individual must have sufficient wages in covered employment during the base period. The base period is the first four of the last five completed calendar quarters preceding the week in which the claim is filed. If the claimant has earned insufficient wages in the first 4 of the last 5 completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the 4 most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year. (See the Appendix at the end of this document for current qualifying requirements and minimum and maximum benefit amounts.) 60.2-204, 60.2-612

Once a claim is established, it remains in effect for one year. During that year, the claimant may, if he is unemployed and otherwise eligible, receive weekly benefits until he exhausts his entitlement. 60.2-206, 60.2-602

EMPLOYER'S REPORT OF SEPARATION & WAGE INFORMATION - At the time a claim is filed, a request for information is mailed to the last thirty-day or 240 hour employer, and to any subsequent less-than-thirty-day/240 hour employer. This form is called "Employer's Report of Separation and Wage Information." It should be completed and returned by the return date shown on the form. Otherwise the Claims Deputy may not receive the information in time to be considered in determining the claimant's eligibility to receive benefits. 60.2-619

The report asks whether you would like to participate in a fact-finding interview, which is an informal interview with the Claims Deputy. It allows both the employer and the claimant an opportunity to present their sides of the case and offer rebuttal. If you do not wish to participate, your written statement will be considered in determining eligibility. 60.2-619, Regulation 16 VAC 5-80-10.

Unemployment claims may cost your company money. If you do not believe that an employee meets the criteria for receiving benefits you should participate in any hearing. Please see "frequently asked questions" on our web site for additional information.

PREDETERMINATION FACT-FINDING INTERVIEW - Whenever a separation issue exists, a fact-finding interview is scheduled approximately two weeks from the date a claim is filed. This interview is conducted by telephone. The employer is not required to participate. Any written information (reprimands, warnings, attendance records, signed policy statements, etc.) submitted will receive full consideration. However, the employer's participation adds weight to the case and provides the opportunity to offer rebuttal to any statement made by the claimant at the interview. 60.2-619, Regulation 16 VAC 5-80-20

NONMONETARY DETERMINATION - Whenever any eligibility issue arises, a Claims Deputy gathers the facts needed to determine whether benefits should be denied or allowed. The Deputy then issues a "Notice of Deputy's Determination," VEC B-54. This notice includes a summary of the facts surrounding the case and the section of law that pertains to that issue. Finally, it states the Claims Deputy's decision pertaining to eligibility and the procedure to follow should an interested party wish to appeal. 60.2-619, Regulation 16 VAC 5-80-30.

A claimant who is initially determined eligible to receive benefits by the Commission may continue to receive them until an appeal is decided against him. If he is finally found to be ineligible, he will be required to repay the benefits received. If an appeal is decided in favor of the claimant who once was disqualified, the individual may be paid benefits properly claimed for the time the claim was on appeal. 60.2-619, 60.2-633

Disqualifications or indefinite denials to receive benefits remain in effect until the claimant is employed thirty days (or 240 hours) with one employer and becomes unemployed through no fault of his own. An individual who is qualified to receive benefits must meet weekly eligibility requirements before benefits are paid. Failure to meet these requirements can result in a denial of benefits for the week(s) in which the failure occurred. 60.2-612, 60.2-618

SEPARATION ISSUES

Discharge -The claimant shall be disqualified if it is determined by the Commission that he was discharged for misconduct in connection with work. The employer must show that the claimant deliberately violated an established rule or intentionally committed an act in disregard of the employer's interests. 60.2-618

Voluntary Quit -The claimant shall be disqualified if it is determined by the Commission that he voluntarily left his employment without good cause. In disputes over whether a separation was a quit or discharge, the employer bears the burden of establishing it as a quit. Once done, the claimant must show that he was compelled without reasonable alternative to leave his employment. The law specifically states that leaving employment to enter into self-employment or to follow or accompany one's spouse to another locality does not constitute good cause. 60.2-618

Voluntary Quit/Discharge -The claimant is eligible for only two weeks of benefits if he gives notice of resignation but is terminated immediately by the employer and is not allowed to serve out his notice. 60.2-612. This provision applies only if the claimant cannot establish good cause for leaving work pursuant to 60.2-618, and was not discharged for misconduct as provided in 60.2-618.

Labor Dispute -The claimant may be held ineligible if his unemployment is due to a labor dispute in active progress. 60.2-612

WEEKLY ELIGIBILITY REQUIREMENTS

Failure to Accept Suitable Work - If the claimant refuses suitable work without good cause while claiming unemployment benefits, he may be disqualified from receiving further benefits. Many factors are considered in determining suitable work including work experience, wages, the claimant's health, safety, physical fitness, the degree of risk to his moral well-being, and the distance of the work from his home. Work is not considered suitable if it is available due to a strike or lockout, if the conditions of work are substantially less favorable than those prevailing for similar work in the community, or if the claimant would be required to quit or to join a union. A disqualification begins with the first day of the week in which the failure to accept work occurred. 60.2-618

Able & Available -The claimant shall be held ineligible for any week in which he is not able and available for work. He must be physically and mentally capable of performing work and he must be willing to accept such work without undue restrictions. He also must make an active, personal search for work each week and provide a list of all job contacts to the Commission. The Commission verifies selected contacts each week. Individuals who falsify such contacts may be prosecuted or disqualified from receiving further benefits for a full year. 60.2-618

Waiting Period - For each benefit year a claimant must serve a waiting period, which is not paid. The waiting period is the first week claimed in which all the eligibility requirements have been met. Only one waiting period week is served in a benefit year. 60.2-612

Earnings - A claimant must report gross earnings, including holiday/vacation pay, for each calendar week while he is claiming benefits. If he earns less than his weekly benefit amount, his benefits are reduced by the amount that his earnings exceed \$50. All wages earned during a shift that begins on Saturday and ends on Sunday may be reported for the week in which the majority of such wages were earned. 60.2-226, 60.2-603

Severance Pay - Severance and dismissal pay is treated as wages and may be allocated by the employer for any period following separation provided it is at a weekly rate at least equal to the average weekly wage received by the employee during the last calendar quarter preceding the separation. Note the allocation on the employers separation report and return it promptly because if no allocation is made by the employer, the severance pay will be allocated to the last day of work. 60.2-229.

If you have questions regarding the treatment of severance pay, contact the Manager of the VEC Field Office nearest you. A full listing of VEC office locations, phone numbers, and contact names are listed on the VEC web site.

Pension - Only 50 % of the weekly Social Security pension amount is deductible from UI benefits. Once the UI Trust Fund reaches 50% solvency, there will be no deduction of a Social Security pension.

If a claimant is receiving a pension based on his previous work from a base-period or chargeable employer and the weekly amount is less than his weekly benefit amount, his benefit amount is reduced dollar-for-dollar by the amount of his pension. If the pension exceeds his weekly benefit amount, he is not eligible for benefits. Service-connected veterans' disability payments from the Veterans Administration are not deducted from the weekly benefit amount. Certain workers' compensation payments are similarly exempt. 60.2-604

PARTIAL UNEMPLOYMENT - Partial unemployment occurs during any week in which an individual works, but at reduced hours due to a lack of full-time work. The claimant may be eligible for benefits if he earns less than his weekly benefit amount, but not solely because he did not work on a legal holiday as defined in Section 2.1-21 of the Code. An employee who receives only holiday pay without working in a particular week cannot be considered partially unemployed and must instead report to a commission local office to file a part-total claim for the week. 60.2-226, Regulation 16 VAC 5-10-10.

When an individual files a claim for partial unemployment, a "Notification of Claim(s) Filed for Benefits" (VEC-B-32) is mailed to the employer by the Commission. This notice advises the employer of the filing of the claim and the claimant's weekly benefit amount. The employer must furnish the claimant with a "Statement of Partial Unemployment," VEC-B-31, within fourteen days of the end of the pay period in which partial unemployment occurred. Regulation 16 VAC 5-60-20. This form may be obtained from your nearest VEC office, or on the VEC web site.

MASS SEPARATIONS - A mass separation occurs whenever twenty-five or more workers in an establishment are laid off, either temporarily or permanently, at the same time. Notify the VEC office nearest your place of employment no later than twenty-four hours prior to the date of the layoff, and provide a list of workers' names and social security numbers in alphabetical or numerical sequence.

If you have frequent layoffs of 100 or more workers, you may consider submitting a computer diskette with the required information. Your nearest VEC office can provide further information about the required format. Regulation 16 VAC 5-60-10.C.

SEPARATION DUE TO A LABOR DISPUTE - You should notify the Commission of the existence of the labor dispute and the approximate number of workers affected. The Commission may request the names of the workers ordinarily attached to the department or establishment affected by the labor dispute. Regulation 16 VAC 5-60-10.C.

INTERSTATE CLAIMS - If an individual earns base-period wages in covered employment in Virginia and moves to another state, he may file an interstate claim against the state of Virginia. Also, an individual may file a claim in Virginia against another state if base-period wages were earned in the other state. As an interested party, you may be asked to furnish separation information to Virginia or to any other state. Information should be furnished within the time limits specified on the form to ensure that a proper eligibility determination is made. 60.2-116, Regulation 16 VAC 5-70-10.

OVERPAYMENTS - If a claimant is paid benefits and is later determined to be not entitled, he is required to repay those benefits. Benefits will not be paid until the overpayment is satisfied unless the overpayment was the result of the Commission's administrative error. In that case, benefits are paid at 50% of the weekly entitlement until the overpayment is satisfied. Reversed appeals are not classified as administrative errors.

Collection methods include billing notices, repayment agreements, offsets of other benefit entitlement, the interception of state income tax refunds, and referrals to a collection agency. Interest and the cost of collection may be added to the overpaid amount. 60.2-633

FRAUD: DETECTION, PREVENTION & PENALTIES - The VEC unemployment compensation procedures contain several safeguards against fraudulent claims:

1. A "Report of Separation and Wage Information" is sent to the last employer(s) for whom the claimant worked. The purpose of the report is to notify the employer that a claim has been filed to determine why the claimant is unemployed. 60.2-619, Regulation 16 VAC 5-60-10.B
2. A random sample of job contacts is verified by telephone or by mail every day. You can assist us by keeping a daily record of those individuals who contact you in-person for work. 60.2-612
3. The Eligibility Review Program includes in-person interviews with claimants regarding their job search techniques and their eligibility.
4. Automated benefit payment files and wage records are cross-matched each quarter to discover those who are claiming benefits while working. These claims are reviewed to see if the claimant is reporting his earnings accurately. You may receive a "Request for Wage Information", VEC-BPC-65, from our Benefit Payment Control Unit asking you to verify earnings.
5. The Quality Control Program provides for a review of our claim process. A random sample of claims undergoes a thorough investigation by our quality control auditors to determine if the claims were processed and paid correctly.
6. Our Benefit Payment Control Unit investigates and prosecutes those individuals suspected of fraud. The penalties for fraud are severe.
7. The unemployment benefit data files are cross matched with the new-hire directory furnished by the Department of Social Services to determine if a claimant has returned to work and is continuing to claim benefits.

Claimants who falsify information to the Commission may be prevented from drawing benefits for a one-year period and, if convicted, the courts may impose additional penalties or fines, imprisonment, or both. Any benefits improperly paid must be repaid to the Commission. 60.2-618, 60.2-632, 60.2-633, 60.2-635

THE APPEALS PROCESS - The claimant and the employer have the right to challenge any adverse decision of the agency. However, appeals must be filed within prescribed time limits. 60.2-500, 60.2-528, 60.2-536, 60.2-619, 60.2-620, 60.2-621, 60.2-622, 60.2-625, Regulation 16 VAC 5-80.

NONMONETARY DETERMINATION - The deputy issues a "Notice of Deputy's Determination," VEC-B-54, to the claimant, the last 30-day (or 240 hour) employer, and, if appropriate, any less-than-30-day/240 hour employer. If any party disagrees with the determination, he may appeal within 30-days of the date the determination is mailed. An appeal may be filed in person or by sending a written statement to the Appeals Section, Post Office Box 1358, Richmond, Virginia 23218-1358, or to the VEC office where the claim was filed. The claimant's social security number should be included in the letter. 60.2-101, 60.2-619, Regulation 16 VAC 5-80-10.

FIRST LEVEL APPEALS - The first level of appeal includes a hearing before an Appeals Examiner. A tape recording is made of sworn testimony from parties and witnesses appearing at the hearing. This hearing is usually the only opportunity to present evidence and to examine and cross-examine witnesses. A written decision is issued to the parties either affirming or reversing the Deputy's determination. All parties have 30-days from the date of mailing to file an appeal with the office of Commission Appeals.

If the parties are located in different states or a compelling circumstance makes attendance at an in-person hearing unreasonably difficult, a telephonic hearing where both parties participate by telephone conference call may be scheduled. In the alternative, a "split" hearing may be scheduled which would allow the party, representative, or witness who could not attend in person to participate by telephone. Each party will receive a hearing notice instructing them where to report or how to participate telephonically. 60.2-619, 60.2-620, Regulation 16 VAC 5-80-20.

COMMISSION APPEALS -The Commission appeal process usually consists of a review of the administrative record. However, any party may petition for oral argument within fourteen days of the date of mailing of the "Notice of Appeal". In this proceeding, all parties may appear before a Special Examiner in our courtroom in the Richmond central office.

A request to present additional testimony and evidence may be made when the petition for oral argument is filed. The Special Examiner will issue a written decision that becomes final, if not appealed, ten days after the date of mailing. If a further appeal is desired, request for judicial review must be filed with the Circuit Court in the county or city in which the claimant was last employed within 30-days after the Commission decision becomes final. Be specific in making any request to present additional testimony or evidence; otherwise it will most likely be denied. 60.2-622, 60.2-625, Regulation 16 VAC 5-80-30.

SPECIAL PROGRAMS

EXTENDED BENEFITS (EB) -The Extended Benefits program provides up to thirteen additional weeks of benefits beyond the maximum twenty-six weeks provided under the Virginia Unemployment Compensation Act. Extended benefits are payable to those who exhaust their regular benefits when the insured unemployment rate equals or exceeds six percent for thirteen consecutive weeks. Virginia is reimbursed by the federal government for 50% of extended benefits paid. Employers are charged the remaining 50%. Governmental agencies, however, will be charged 100% for all weeks paid under extended benefits.

TRADE READJUSTMENT ALLOWANCES (TRA) -Workers who lose their jobs as a direct result of import competition may be eligible for special benefits under the Federal Trade Act of 1974, as amended. Affected workers must file a "Petition for Adjustment Assistance" and be certified by the United States Department of Labor to be eligible for benefits. This form may be obtained by contacting the nearest VEC Field Office.

Benefits include Trade Readjustment Allowances (additional weeks of unemployment), occupational training, job search allowances, and relocation allowances. The financial assistance provided to workers is federally funded and is not charged against the employer's tax rate.

DISASTER UNEMPLOYMENT ASSISTANCE (DUA) - The Disaster Relief Act of 1974 provides assistance in the form of temporary income to individuals who are unemployed as a result of a major disaster. DUA becomes available only after the President declares a specific geographic area authorized to receive federal assistance. Contact your nearest Virginia Employment Commission office to obtain more information.

An unemployment insurance claim will be filed initially, and if the claimant is monetarily qualified they will receive regular unemployment insurance benefits, which are charged to the last 30-day/240 hour employer. However, effective July 2004, benefit charges are waived if an individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer's business, and if the individual returned to his regular full-time employment once the business reopened.

In no case shall more than four weeks of benefit charges be waived. If the claimant does not qualify monetarily for unemployment insurance, a DUA claim will be filed. DUA is paid solely from federal funds and does not affect employer tax rates.

OTHER SPECIAL BENEFITS PROGRAMS - From time to time, Congress may enact special unemployment benefits programs because of extremely high levels of unemployment nationwide. The most recent example is the Temporary Extended Unemployment Compensation (TEUC) that was in effect from March 8, 2002 until April 3, 2004. Usually, the federal government for such special additional benefits reimburses Virginia and the benefits are not charged to employers.

JOB SEEKER SERVICES - Virginia employers save time and money on recruitment and training of new personnel when they use Job Service. The Virginia Employment Commission Job Service offices not only serve as a job referral service to individuals seeking employment, but also assist employers in filling vacancies.

SCREENING & REFERRAL - Throughout the state, Job Service offices have job seekers registered with them who possess skills and experience in a wide variety of occupational areas. These individuals have experience in almost any area: professional, managerial, sales, service, and manufacturing, just to name a few. There are also individuals who are semi-skilled or who may be seeking their first employment opportunity.

An employer with a job opening can place a job order with the VEC from our web site, located at, <http://www.vec.virginia.gov/vecportal/forms/vecempform.cfm> or with the nearest VEC field office, which will match the skills and experience required for that particular opening with the skills and experience of registered job seekers. After screening, the office will refer the specific number of job seekers requested who match the job requirements. This allows employers to interview only those individuals having the particular qualifications needed and not have to spend time reviewing and screening the applications of those not meeting the requirements. If the workers with the required skills are not available locally, the job can be listed on America's Job Bank, a nationwide recruitment system.

Listing jobs with the VEC Job Service has economic impact on Virginia. Because unemployment insurance claimants are among those registered with the Job Service, their skills and experience are constantly being evaluated against listed jobs. This means that based on their qualifications, they may be referred and hired more quickly. Returning an individual to the work force reduces unemployment, helps maintain solvency in the trust fund, and reduces potential tax liability for employers.

TESTING - The Job Service presently administers clerical skills tests. Clerical tests measure proficiency in regular and statistical typing; regular, medical, and legal spelling; and dictation. The use of valid tests will lead to reduced training costs and lower employee turnover for employers.

AMERICA'S JOB BANK (AJB) - If employers are unable to recruit qualified applicants locally, the job openings can be listed electronically throughout the state and even nationwide on the U.S Department of Labor "America's Job Bank" web site at: <http://www.ajb.org/> to help meet the employer's recruitment needs.

WORK OPPORTUNITY AND WELFARE TO WORK TAX CREDIT (WOTC) - The Ticket to Work and Work Incentives Improvement Act of 1999 reauthorized the Work Opportunity Tax Credit (WOTC) and the Welfare-to-Work Tax Credit (WtW) for employers who hire long-term welfare recipients. Long-term recipients can earn their employer a tax credit of up to \$3,500 for their first year, and \$5,000 for their second year of employment. Welfare recipients and members of other target groups can earn employers a WOTC credit of up to \$2,400 in the first year. The number of new hires who can qualify employers for these credits is unlimited. For specific details about the benefits of this program, and the requirements for eligible employees, contact the Virginia Employment Commission (VEC) at 804-786-1614.

Employers must apply for and receive certification from the VEC that their new hire belongs to one of nine groups of jobseekers eligible for the WOTC or WtW programs before claiming it on their federal income tax return. To apply employers need only complete two single-page forms:

1. **IRS form 8850.** This form must be mailed to the VEC no later than the 21st day after the job applicant begins work. Instructions for completing IRS form 8850 are available at: <http://www.irs.gov/pub/irs-pdf/i8850.pdf>. The form can be found at: <http://www.irs.gov/pub/irs-pdf/f8850.pdf> or call the IRS at 1- 800-829-3676.
2. **U.S. Department of Labor form ETA 9061.** You may access this form online at: <http://www.vec.virginia.gov/vecportal/employer/wotc.cfm>

To receive the form by mail call the VEC WOTC unit at 804-786-1614, or fax your request to 804-786-1285. Employers should mail the signed IRS *and* ETA forms to:

Virginia Employment Commission
WOTC Coordinator
P. O. Box 1358
Richmond, VA 23218-1358

ALIEN LABOR CERTIFICATION PROGRAM - Employers requesting labor certification for the temporary or permanent employment of foreign workers are required to offer prevailing wages and working conditions for that particular occupation and to demonstrate that no similarly employed U.S. worker will be adversely affected.

Effective March 28, 2005, Applications for Permanent Employment Labor Certifications must be filed directly with the U. S. Department of Labor and not with the Virginia Employment Commission. The form used for filing for a permanent labor certification (ETA Form 9089) and instructions can be found at www.ows.doleta.gov/foreign/form

The Virginia Employment Commission (VEC), under a grant from the U.S. Department of Labor (DOL), will continue to provide Prevailing Wage Determinations to employers for Permanent, H-1B and H-2B Labor Certification programs. The Prevailing Wage Request Form can be found at www.vec.virginia.gov/vecportal/employer/alienlabor.cfm

Temporary Labor Certification (H-2B) Nonagricultural - The H-2B nonimmigrant program permits employers to hire foreign workers to come to the U.S. and perform temporary nonagricultural work, which may be (1) one-time, (2) seasonal, (3) peak load or (4) intermittent. There is a 66,000 per year limit on the number of foreign workers who may receive H-2B status during each fiscal year (October through September).

Qualifying Criteria:

- The job and the employer's need must be one time, seasonal, peak load, or intermittent.
- The job must be full time and less than one year.
- There must be no qualified and willing U.S. workers available for the job.
- The employer must pay at least the prevailing wage for the occupation.

H-2B Process - The employer files a completed ETA 750 A form in duplicate to the ALC Unit. Multiple openings of the same job and rate of pay may be on the same application. The employer should file for H-2B at least 60 days, but not more than 120 days, before the worker is needed. There must be an explanation on why the employer has a temporary need and this must be on a company letterhead and signed by the employer.

The application is reviewed for the qualifying criteria and the employer is instructed to publish newspaper advertisements in conjunction with a 10-day job order. Once the recruitment process is completed and documented, the application is sent to the U.S. Department of Labor for a final determination. For more information, visit the Department of Labor's website at www.dol.gov or contact the Virginia ALC Unit in Richmond at (804) 236-2708 or (804) 236-2717.

WORKER ADJUSTMENT & RETRAINING NOTIFICATION (WARN) - A federal law, the Worker Adjustment & Retraining Notification Act, requires employers to give a 60-day advance notice of closings or major layoffs.

Who is affected by the Worker Adjustment and Retraining Notification (WARN) Act? Employers with **100** or more full-time workers and the employer deems it necessary to do any of the following:

- close a facility or discontinue an operating unit with 50 or more full-time workers;
- lay off 50-499 full-time workers (and these workers comprise at least 33% of the total work force at a single site of employment) or,
- lay off 500 or more full-time workers at a single site of employment.

Employers must send notice, *in writing*, to the following three entities:

1. Each employee to be laid off or, if represented by a union(s), to the employee's union representative(s). Mailing of notice to employee's last known address or inclusion of notice in the employee's paycheck envelope is also an appropriate means of notice.
2. The local government's chief elected official. If in more than one jurisdiction, notice should be sent to the local elected official of the jurisdiction to which the most taxes are paid.
3. The Dislocated Worker Unit at the following address:

Virginia Employment Commission
State Dislocated Worker Unit - Room 121
P.O. Box 1358
Richmond, VA 23218-1358

What should be included in the notice?

- the name and street address of the employment site where the plant closing or mass layoff will occur;
- a statement as to whether it is a plant closing or a mass layoff;
- the expected date of the first separation and the number of affected employees in each job classification;
- a statement as to the existence of any applicable bumping rights;
- where applicable, the name of each union and the name and address of the chief elected officer of each union; and
- the name, address, and telephone number of a company official to contact for further information.

These are the major provisions of the WARN legislation. Employers are encouraged to consult an attorney if faced with the unpleasant prospect of a plant closing or mass layoff if they have questions regarding this legislation. Additional information on WARN is also available at the US Department of Labor website by clicking on <http://www.doleta.gov/layoff/warn.cfm>.

DISLOCATED WORKERS / RAPID RESPONSE - A Rapid Response Team has been established to provide employment transition information to dislocated workers covered by WARN on resources and services available for career planning, classroom training opportunities, financial guidance, job placement assistance, unemployment benefits, stress counseling, and much more. For more information on Rapid Response Services, please click on <http://www.doleta.gov/layoff/employers.cfm>. Or contact the State Dislocated Worker Unit at (804) 786-3037 voice, or (804) 225-2190 fax

Program Description - The State Dislocated Worker Unit (DWU) receives notices of plant closures and mass layoffs, including those covered under the Worker Adjustment and Retraining Notification (WARN) Act. Please click on the link at the U.S. Department of Labor's website at <http://www.doleta.gov/layoff/warn.cfm> for more information on the WARN Act.

When the DWU obtains information about a major layoff, it can respond with on-site services to assist workers facing job losses. Rapid Response provides early intervention assistance designed to transition workers to their next employment as soon as possible. While the Rapid Response Program is administered at the state level, it is planned and implemented at the local level through a combined team effort.

The more quickly Rapid Response is begun, the more time is available for workers to overcome their fears and begin their re-entry into the workforce. Early intervention allows employers and workers to communicate about worker concerns, to take advantage of worker transition committee opportunities, to initiate peer worker projects, and to identify, design and oversee layoff aversion and incumbent worker strategies.

Program Eligibility - Rapid Response services are available in layoffs which involve twenty-five (25) or more workers and plant closings or mass layoffs which affect fewer than twenty-five (25) employees, but occur in a business or industry which forms the economic base of a small community (population 50,000 or less). Workers affected by layoffs of under 25 individuals, which do not receive Rapid Response services through the State, may access WIA services directly through their local Workforce Investment Board (WIB).

Information Briefings - A VEC Employment Transition Services Manager is stationed in each of the state's four regions and works directly with company representatives and employees to design and deliver employment transition services before the actual layoff date. Services include meeting with the Employer Management Team to get more information about reduction in force plans, provide an overview of service options and to customize services according to workforce needs.

The focus of the first meeting with the workers who will be dislocated is to give the employees information about:

1. How the VEC Job Service works and how it can help them get more information about job opportunities;
2. Unemployment Insurance guidelines and benefits;
3. Intensive Services and appropriate training opportunities under the Workforce Investment Act (WIA); and
4. Resources available in the community.

The major goal is to develop a working relationship with the employees and encourage their participation in the programs offered.

Workforce Transition Team - A company facing a reduction in force may establish a committee to facilitate transition services for the affected employees. The teams often include representatives from the human resources, training, and employee assistance departments; managers/supervisors; union stewards; and the employees.

The VEC Employment Transition Services Manager is available to serve as an active member of this team and will work with the group to plan services that meet the needs of the affected workers.

Core Services Available - Based on the results of a Rapid Response Needs Assessment Survey of each employee, Core Services can be provided in groups. A survey of the workforce needs and concerns will help to ensure that the services provided are of value and importance to the group. Rapid Response may provide the following services in a group format:

- Job Search Assistance may include accessing community resources, job application and resume preparation, assessing accomplishments and skills, resume development lab, interviewing skills, effective interviewing techniques, practice interviewing lab and coping with job loss. These services are available through Rapid Response in a group format.
- Assistance is provided in coordinating the mass filing of Unemployment Insurance claims and the registration for Job Services.
- Labor Market Information will be furnished to all registrants, including Emerging and Demand Occupations. Job Postings will also be made available through multimedia and technology.
- Group Stress Management Seminars shall be made available on a regular and/or as needed basis. The focus of these seminars will be to develop strategies for managing the stress associated with job loss, its impact on the family unit and on maintaining community relationships.
- Group Financial Management Seminars primarily focus on assisting affected workers in developing financial planning skills in order to maintain household and consumer finances. A specific focus will be on negotiating manageable payment schedules with mortgage, finance and various lending institutions.
- Assistance with setting up an on-site Resource Center. We have a Transition Library that we can bring to your location and allow your employees to use in their research. Consultation is provided regarding additional resources for the center.

Layoff Aversion - Layoffs should be averted through the use of strategies that help retain or save jobs, if possible. With a range of tools and relationships with other programs and organizations, the Rapid Response team is in an ideal position to coordinate aversion strategies. In many cases, the Rapid Response staff may refer companies to other entities that can help to avert a layoff.

The aim of the aversion could be to help the company make changes so that layoffs are reduced or completely avoided. In other cases, the strategy will be to find a buyer so that the layoffs are averted in that way. DWU staff has developed a close partnership with the Department of Business Assistance (DBA) to identify businesses that could benefit from these services and to cooperatively work in providing them.

Service Delivery Structure - Virginia is divided into 17 Workforce Investment Areas. Rapid Response is administered at the state level, but operated at the local level. Persons seeking services can contact their local Virginia Workforce Network office. Rapid Response services offered to any company and its employees are tailored, based on the needs of the affected employees, and are at no cost to the employer or the affected workers. For more information about the 17 local Workforce Investment Areas, please log onto the VEC's Web site at <http://www.vec.virginia.gov/vecportal/wia/index.cfm> and click on "Local Workforce Investment Boards."

DWU STAFF - In addition to the State DWU Manager, Harold Kretzer hkretzer@vec.state.va.us, there are Employment Transition Services Managers strategically located across the state to provide on-site coordination of Rapid Response activities and services:

Eastern Region: Clifton (Clif) O'Neill (clifton.o'neill@vec.virginia.gov)
 Virginia Employment Commission
 600 Butler Farm Road – Suite B
 Hampton, VA 23666
 (757) 865-5834 voice

Central Region: Felecia McClenny (felecia.mcclenny@vec.virginia.gov)
Virginia Employment Commission
5211 West Broad Street
P.O. Box 6871
Richmond, VA 23230
(804) 662-9601 voice

Central Region: Dianne James (dianne.james@vec.virginia.gov)
Virginia Employment Commission
3125 Odd Fellows Road
Lynchburg, VA 24506
(434) 947-2065 voice

Western Region: C.E. Hughes (clarence.hughes@vec.virginia.gov)
Virginia Employment Commission
206 Third Avenue
Radford, VA 24141
(540) 831-5985 voice

Northern Region: Gregory Vaughn (gregory.vaughn@vec.virginia.gov)
Virginia Employment Commission
13135 Lee-Jackson Highway – Suite 340
Fairfax, VA 22033-1907
(703) 803-1146 voice

VETERANS PROGRAM - US Military Veterans, especially Disabled veterans, Campaign Badge veterans, and Transitioning Service Members receive preference in all Employment Service programs. All resources of the VEC are available to assist in veteran job referral and placement. Local Veterans Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) staff are available in most VEC offices. They work with employers and veteran job seekers to match qualified veterans to the employers' job openings. To obtain veterans services, or for more information, contact the nearest VEC Field Office. Addresses, phone numbers, and other information are available online at http://www.vec.virginia.gov/vecportal/field/field_offices.cfm

Additional information concerning transition services and your rights, benefits and status as a veteran are available from the U.S. Department of Labor, Veterans' Employment and Training Service at <http://umet-vets.dol.gov/vets/> or the Department of Veterans Affairs at <http://www.va.gov/>.

TRADE ADJUSTMENT ASSISTANCE (Trade Act of 1974, As Amended, and the Trade Act of 2002) - Trade Act programs are available to assist individuals who have become unemployed as a result of increased imports. The goal is to help such laid-off workers return to suitable employment as quickly as possible. Either company officials, a group of three or more workers or their union representative must file a petition with the U.S. Department of Labor's Division of Trade Adjustment Assistance (DTAA) in Washington, D.C. who makes the final determination on certifications for such adversely affected workers. These workers must be, or have been, employed regularly at the firm or subdivision identified in the petition, and their employment must be, or have been, related to the production of articles (products) described in the petition. The VEC administers this program through its field office network.

Program Support Services can provide employers with information on benefits available to companies and workers negatively impacted by foreign imports. If a petition being considered by an adversely affected employer is granted, the laid off employees may receive weekly benefits beyond those granted by unemployment insurance as well as financial assistance while enrolled in approved retraining programs.

On August 6, 2002, President Bush signed into law the Trade Act of 2002. This Act includes several amendments to the 1974 Act. The amendments are applicable to petitions for TAA filed

on or after November 4, 2002. Petitions filed on or before November 3, 2002 are covered by the provision of the 1974 Act that were in effect on September 30, 2001. The 2002 Act repeals subchapter D of Chapter 2 or Title II of the 1974 Act (the NAFTA-TAA program). However, workers covered under certifications issued prior to November 3, 2002, will continue to be covered under the provision of the NAFTA-TAA program that were in effect on September 30, 2001. Additional information and petition forms in English and Spanish are available from the US Department of Labor website at: <http://www.doleta.gov/tradeact/>

ECONOMIC INFORMATION SERVICES

Labor Market and Demographic Information -The Virginia Employment Commission's Economic Information Services Division is prepared to assist employers in developing reports on the labor market and demographic data.

The following publications highlight Labor Market Information (LMI) use and clarify those specific LMI resources that meet your needs. For more information visit our Web site at: www.vec.state.va.us.

Wage Data - by occupation/industry.

- Occupation Wage Data—biannual and hourly entry level, mean, median, and other wage statistics by occupation produced for Virginia statewide, Metropolitan Statistical Areas (MSAs), and Workforce Investment Areas (WIAs).
- ES202-Covered Employment and Wages—quarterly employment and wage data by industry, for all counties and cities, MSAs, WIAs, Planning District Commissions (PDCs), and statewide.

Population and Labor Force Data - population, civilian labor force, employment, unemployment, and unemployment rates.

- Local Area Unemployment Statistics (LAUS)—monthly and annualized estimates for all counties, cities, MSAs, Labor Market Areas (LMAs), PDCs, WIAs, and the state.
- Virginia Population Projections annual data for 2000-2030—by age cohorts for counties, cities, MSAs, PDCs, WIAs, and the state.
- Census data for affirmative action planning— counties, cities, MSAs, and the state.

Economic Indicators - study of current and projected economic conditions.

- *Virginia Economic Indicators*—quarterly publication
- *Economic Assumptions, U.S. and Virginia*—annual publication
- *Business Resource Directory*—a guide to setting up and doing business in Virginia, including sources of assistance.
- *Industry and Occupation Projections*—(2002-2012)—potential labor demand.

The Economic Information Services' Labor Market and Demographic Analysis section is ready to assist employers with specific LMI/demographic technical assistance and resources for expansion, relocation, and/or establishment of a business in Virginia. A detailed directory of specific publications—*LMI Directory*—and the areas available, can be obtained from your nearest VEC Field Office, or from:

Virginia Employment Commission
Labor Market & Demographic Analysis Section - Room 213
P.O. Box 1358
Richmond, VA 23218-1358
(804) 786-8223 voice
(804) 371-0412 fax

Web site: <http://www.vec.virginia.gov/vecportal/lbrmkt/lmi.cfm>

TAX & BENEFIT RATE INFORMATION

The following information is accurate (at the time of publication) for the calendar year 2005. For information on other time periods, please contact your nearest VEC Field Office.

Computed Tax Rates

Minimum: 0.52 %

Maximum: 6.62 %

Assigned Tax Rate for New Employers

2.92 %

Pool Cost Charge

0.22 % during this calendar year

Fund Building Charge

0.20 % during this calendar year

Minimum Qualifying Wages

Total of \$2,700 paid in at least two quarters of the base period

Weekly Benefit Amount

Minimum: \$54

Maximum: \$330 (effective 7/3/05)

Duration of Virginia Unemployment Compensation

Minimum: 12 weeks of entitlement

Maximum: 26 weeks of entitlement

VEC FIELD OFFICE LOCATIONS - Visit the VEC web site at www.vec.virginia.gov. for a complete listing of locations, addresses, phone numbers, and hours of operation, consult your local telephone directory, or dial 1-800-897-5630 and choose the option to obtain the location of the office nearest you.

VEC Administrative Office Location:

703 East Main Street, Richmond, VA 23219. (Corner of 7th & East Main Sts.)

Mailing address:

Virginia Employment Commission
P.O. Box 1358, Richmond, VA 23218-1358.

Telephone numbers:

Direct access to the VEC Administrative Offices in Richmond: 804-786-1485

Virginia Relay (Telecommunications Relay Service) "711"

Toll free access: 800-828-1120 (TDD) or 800-828-1140 (voice)

TDD calls: 804-371-8050

IVR: 1-800-897-5630

The Virginia Employment Commission is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Any reasonable accommodation for persons with disabilities may be requested by contacting the manager of the VEC field office where you are seeking services.